

Introduced by Senator Escutia

February 6, 2003

An act to amend Section 1632 of the Civil Code, relating to contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 146, as introduced, Escutia. Contracts: Spanish translation.

Existing law requires a person in a trade or business who negotiates specified contracts or agreements primarily in the Spanish language to deliver to the other party prior to execution thereof, a Spanish language translation of the contract or agreement, except as specified. Failure to comply entitles the aggrieved party to rescind the contract or agreement.

This bill would provide that this translation is required to include a translation of every term and condition in that contract or agreement. The bill would also make nonsubstantive, technical changes to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1632 of the Civil Code is amended to
2 read:

3 1632. (a) Any person engaged in a trade or business who
4 negotiates primarily in the Spanish language, orally or in writing,
5 in the course of entering into *any of the following, shall deliver to*
6 *the other party to the contract or agreement and prior to the*
7 *execution thereof, a spanish-language translation of the contract*



1 *or agreement, which includes a translation of every term and*
2 *condition in that contract or agreement:* ~~(1)~~

3 (1) A contract or agreement subject to the provisions of Title 2
4 (commencing with Section 1801) of, and Chapter 2b
5 (commencing with Section 2981) and Chapter 2d (commencing
6 with Section 2985.7) of Title 14 of, Part 4 of Division 3; ~~(2)~~.

7 (2) A loan or extension of credit secured other than by real
8 property, or unsecured, for use primarily for personal, family or
9 household purposes; ~~(3)~~.

10 (3) A lease, sublease, rental contract or agreement, or other
11 term of tenancy contract or agreement, for a period of longer than
12 one month, covering a dwelling, an apartment, or mobilehome, or
13 other dwelling unit normally occupied as a residence; ~~or (4)~~.

14 (4) Notwithstanding paragraph (2), a loan or extension of credit
15 for use primarily for personal, family or household purposes
16 where the loan or extension of credit is subject to the provisions
17 of Article 7 (commencing with Section 10240) of Chapter 3 of Part
18 1 of Division 4 of the Business and Professions Code, or Division
19 7 (commencing with Section 18000), or Division 9 (commencing
20 with Section 22000) of the Financial Code; ~~or (5)~~.

21 (5) A contract or agreement, containing a statement of fees or
22 charges, entered into for the purpose of obtaining legal services,
23 when the person who is engaged in business is currently licensed
24 to practice law pursuant to Chapter 4 (commencing with Section
25 6000) of Division 3 of the Business and Professions Code;
26 ~~shall, deliver to the party to the contract or agreement and prior to~~
27 ~~the execution thereof, an unexecuted Spanish-language translation~~
28 ~~of the contract or agreement, except that.~~

29 (b) *Notwithstanding subdivision (a), for a loan subject to this*
30 *part and to the provisions of Article 7 (commencing with Section*
31 *10240) of Chapter 3 of Part 1 of Division 4 of the Business and*
32 *Professions Code, the delivery of a Spanish-language translation*
33 *of the statement to the borrower required by Section 10240 of the*
34 *Business and Professions Code shall be deemed is in compliance*
35 *with this subdivision (a). At*

36 (c) *At the time and place where a lease, sublease, or rental*
37 *contract or agreement described in this subdivision (a) is executed,*
38 *a Spanish-language notice shall be provided to the lessee or tenant.*

39 ~~(b)~~

(d) Provision by a supervised financial organization of a Spanish-language translation of the disclosures required by Regulation M or Regulation Z, and, if applicable, Division 7 (commencing with Section 18000) or Division 9 (commencing with Section 22000) of the Financial Code, prior to the execution of the contract or agreement shall also be deemed compliance with the requirements of subdivision (a) with regard to the original contract or agreement.

(1) “Regulation M” and “Regulation Z” mean any rule, regulation, or interpretation promulgated by the Board of Governors of the Federal Reserve System and any interpretation or approval issued by an official or employee duly authorized by the board to issue interpretations or approvals dealing with, respectively, consumer leasing or consumer lending, pursuant to the Federal Truth in Lending Act, as amended (15 U.S.C. Sec. 1601 et seq.).

(2) As used in this section, “supervised financial organization” means a bank, savings association, as defined in Section 5102 of the Financial Code, credit union, or holding company, affiliate, or subsidiary thereof, or any person subject to Article 7 (commencing with Section 10240) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, or Division 7 (commencing with Section 18000) or Division 9 (commencing with Section 22000) of the Financial Code.

~~(e)~~

(e) At the time and place where a contract or agreement described in paragraph (1) or (2) of subdivision (a) is executed, a Spanish-language notice shall be conspicuously displayed to the effect that the person described in subdivision (a) is required to provide an unexecuted Spanish-language contract or agreement, or a Spanish-language translation of the disclosures required by law, as the case may be. If a person described in subdivision (a) does business at more than one location or branch, the requirements of this section shall apply only with respect to the location or branch at which the Spanish language is used.

~~(d)~~

(f) The term “contract” or “agreement,” as used in this section, means the document creating the rights and obligations of the parties and includes any subsequent document making substantial changes in the rights and obligations of the parties. The

1 term “contract” or “agreement” does not include any subsequent
2 documents authorized or contemplated by the original document
3 such as periodic statements, sales slips or invoices representing
4 purchases made pursuant to a credit card agreement, a retail
5 installment contract or account or other revolving sales or loan
6 account, memoranda of purchases in an add-on sale, or refinancing
7 of a purchase as provided by, or pursuant to, the original document.

8 The term “contract” or “agreement” does not include a home
9 improvement contract as defined in Sections 7151.2 and 7159 of
10 the Business and Professions Code, nor does it include plans,
11 specifications, description of work to be done and materials to be
12 used, or collateral security taken or to be taken for the retail buyer’s
13 obligation contained in a contract for the installation of goods by
14 a contractor licensed pursuant to Chapter 9 (commencing with
15 Section 7000) of Division 3 of the Business and Professions Code,
16 if the home improvement contract or installation contract is
17 otherwise a part of a contract described in subdivision (a).

18 Matters ordinarily incorporated by reference in contracts or
19 agreements as described in paragraph (3) of subdivision (a),
20 including, but not limited to, rules and regulations governing a
21 tenancy and inventories of furnishings to be provided by the
22 person described in subdivision (a), are not included in the term
23 “contract” or “agreement.”

24 ~~(e)~~

25 (g) This section does not apply to any person engaged in a trade
26 or business who negotiates primarily in the Spanish language, as
27 described by subdivision (a), if the party with whom he or she is
28 negotiating is a buyer of goods or services, or receives a loan or
29 extension of credit, or enters an agreement obligating himself or
30 herself as a tenant, lessee, or sublessee, or similarly obligates
31 himself or herself by contract or lease, and the party negotiates the
32 terms of the contract, lease, or other obligation through his or her
33 own interpreter.

34 As used in this subdivision, “his or her own interpreter” means
35 a person, not a minor, able to speak fluently and read with full
36 understanding the English and Spanish languages, and who is not
37 employed by, or whose service is made available through, the
38 person engaged in the trade or business.

39 ~~(f)~~

1 (h) The terms of the contract or agreement which is executed
2 in the English language shall determine the rights and obligations
3 of the parties. However, the Spanish-language translation of the
4 contract or the disclosures required by subdivision ~~(b)~~ (d) shall be
5 admissible in evidence only to show that no contract was entered
6 into because of a substantial difference in the material terms and
7 conditions of the contract and the translation.

8 ~~(g)~~

9 (i) Upon a failure to comply with the provisions of this section,
10 the person aggrieved may rescind the contract or agreement in the
11 manner provided by this chapter. When the contract for a
12 consumer credit sale or consumer lease which has been sold and
13 assigned to a financial institution is rescinded pursuant to this
14 subdivision, the consumer shall make restitution to and have
15 restitution made by the person with whom he or she made the
16 contract, and shall give notice of rescission to the assignee.
17 Notwithstanding that the contract was assigned without recourse,
18 the assignment shall be deemed rescinded and the assignor shall
19 promptly repurchase the contract from the assignee.

